

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

eMAG SOLUTIONS LLC, eMAG SOLUTIONS  
LIMITED, GREENCORP MAGNETICS PTY  
LTD., and DELTA MAGNETICS, S.A. de C.V.,  
on behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

TODA KOGYO CORPORATION, et al.,

Defendants.

No. C-02-1611 PJH

**STIPULATED PROTECTIVE ORDER**

CINTAS VAC, S.A. de C.V.

Plaintiff,

v.

TODA KOGYO CORPORATION, et al.,

Defendants.

1. **PURPOSES AND LIMITATIONS**

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting and defending this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter

the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the court to file material under seal.

## 2. DEFINITIONS

2.1 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

2.2 Disclosure or Discovery Material: all items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

2.3 “Confidential” Information or Items: information (regardless of how generated, stored or maintained) or tangible things that qualify for protection under standards developed under F.R.Civ.P. 26(c).

2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items: extremely sensitive “Confidential Information or Items” whose disclosure to another Party or nonparty would create a substantial risk of serious injury that could not be avoided by less restrictive means. Highly Confidential – Attorneys’ Eyes Only Information may be disclosed only to the Parties’ outside counsel, and as permitted under Section 7.3 of this Order.

2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material in this action.

2.7 Designating Party: a Party or non-party that designates information or

1 items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly  
2 Confidential — Attorneys’ Eyes Only.”

3 2.8 Protected Material: any Disclosure or Discovery Material that is  
4 designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

5 2.9 Outside Counsel: attorneys (as well as their support staffs) who are not  
6 employees of a Party but who are retained to represent or advise a Party in this action.

7 2.10 House Counsel: attorneys (as well as their support staffs) who are  
8 employees of a Party.

9 2.11 Counsel (without qualifier): Outside Counsel and House Counsel.

10 2.12 Expert: a person with specialized knowledge or experience in a matter  
11 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert  
12 witness or as a consultant in this action. This definition includes a professional jury or trial  
13 consultant retained in connection with this litigation.

14 2.13 Professional Vendors: persons or entities that provide litigation support  
15 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;  
16 organizing, storing, retrieving data in any form or medium; etc.) and their employees and  
17 subcontractors.

### 18 3. SCOPE

19 The protections conferred by this Stipulation and Order cover not only Protected Material  
20 (as defined above), but also any information copied or extracted therefrom, as well as all copies,  
21 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by  
22 parties or counsel to or in court or in other settings that might reveal Protected Material.

### 23 4. DURATION

24 Even after the termination of this litigation, the confidentiality obligations imposed by this  
25 Order shall remain in effect until a Designating Party agrees otherwise in writing.

### 26 5. DESIGNATING PROTECTED MATERIAL

27 5.1 Exercise of Restraint and Care in Designating Material for Protection. To  
28 the extent practicable, each Party or non-party that designates information or items for protection

1 under this Order must take care to limit any such designation to specific material that qualifies  
 2 under the appropriate standards. A Designating Party must take care to designate for protection  
 3 only those parts of material, documents, items, or oral or written communications that qualify –  
 4 so that other portions of the material, documents, items, or communications for which protection  
 5 is not warranted are not swept unjustifiably within the ambit of this Order. If only part of a  
 6 document contains confidential information, the first page of the document shall state: “A  
 7 PORTION OF THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION” or “A  
 8 PORTION OF THIS DOCUMENT CONTAINS HIGHLY CONFIDENTIAL INFORMATION.”

9 If it comes to a Party’s or a non-party’s attention that information or items that it  
 10 designated for protection do not qualify for protection at all, or do not qualify for the level of  
 11 protection initially asserted, that Party or non-party must promptly notify all other parties that it is  
 12 withdrawing the mistaken designation.

13 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
 14 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,  
 15 material that qualifies for protection under this Order must be clearly so designated before the  
 16 material is disclosed or produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (apart from transcripts of  
 19 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend  
 20 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” on each  
 21 page that contains protected material. To the extent practicable, if only a portion or portions of  
 22 the material on a page qualifies for protection, the Producing Party also must clearly identify the  
 23 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for  
 24 each portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY  
 25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

26 A Party or non-party that makes original documents or materials available  
 27 for inspection need not designate them for protection until after the inspecting Party has indicated  
 28 which material it would like copied and produced. During the inspection and before the

1 designation, all of the material made available for inspection shall be deemed “HIGHLY  
 2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the  
 3 documents it wants copied and produced, the Producing Party must determine which documents,  
 4 or portions thereof, qualify for protection under this Order, then, before producing the specified  
 5 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or  
 6 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) on each page that contains  
 7 Protected Material. To the extent practicable, if only a portion or portions of the material on a  
 8 page qualifies for protection, the Producing Party also must clearly identify the protected  
 9 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each  
 10 portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY  
 11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

12 (b) for testimony given in deposition or in other pretrial or trial  
 13 proceedings, that the Party or non-party offering or sponsoring the testimony either (1) identify on  
 14 the record, before the close of the deposition, hearing, or other proceeding, all protected  
 15 testimony, and further specify any portions of the testimony that qualify as “HIGHLY  
 16 CONFIDENTIAL – ATTORNEYS’ EYES ONLY; or (2) upon review of such transcript by  
 17 counsel for the disclosing party, if counsel notifies opposing counsel of the designation within  
 18 twenty (20) days after counsel's receipt of the transcript by listing the numbers of the pages of the  
 19 transcript containing protected testimony, attaching the list to the transcript, and mailing copies to  
 20 counsel for all parties. Pending such designation by counsel, the entire deposition transcript,  
 21 including exhibits, shall be deemed Highly Confidential – Attorneys’ Eyes Only. If no  
 22 designation is made on the record or within twenty (20) days after receipt of the transcript, the  
 23 transcript shall be considered not to contain any Protected Material. Should a receiving party  
 24 need to disclose portions of the deposition testimony publicly (e.g., in a public filing) before the  
 25 aforementioned twenty-day period has elapsed, it may request that the producing party conduct an  
 26 expedited confidentiality review. Within five (5) calendar days of such a request, the producing  
 27 party shall identify for opposing counsel which deposition transcript pages, if any, contain  
 28 confidential information.

Transcript pages containing Protected Material must be separately bound by the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or nonparty offering or sponsoring the witness or presenting the testimony.

(c) for information produced in some form other than documentary, and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portions, specifying whether they qualify as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. If material is appropriately designated as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party, on timely notification of the designation, must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

## 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party’s confidentiality designation must do so in good faith and must begin the process by conferring directly with counsel for the Designating Party. In conferring, the challenging Party must explain the basis for its belief that the confidentiality designation was not

proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first.

6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality designation after considering the justification offered by the Designating Party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet and confer requirements imposed in the preceding paragraph and that sets forth with specificity the justification for the confidentiality designation that was given by the Designating Party in the meet and confer dialogue.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until the court rules on the challenge, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation.

## 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL DISPOSITION).

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated CONFIDENTIAL only to:

(a) Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation;

(c) experts or consultants (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation;

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author of the document or the original source of the information.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

(a) Outside Counsel of record in this action, as well as employees of said Outside Counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) Experts and consultants (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, and (2) who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(c) the Court and its personnel;

(d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation; and



1 (e) the author of the document or the original source of the  
2 information.

3 7.4 Nothing herein (i) shall prevent a Party from disclosing Protected Material  
4 to present or former officers, directors or employees of the person or entity producing such  
5 information in discovery, or (ii) shall impose any restrictions on the use or disclosure by a Party  
6 or its counsel of documents, materials or information obtained by such Party or its counsel from a  
7 source independent of the discovery proceedings in this lawsuit. Notwithstanding the provisions  
8 of this Protective Order, this Order does not restrict the right of the Party who has disclosed  
9 Protected Material to make such use or disclosure of its own Protected Material as it otherwise is  
10 lawfully entitled to make outside the scope of this litigation.

11 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
12 OTHER LITIGATION.

13 If a Receiving Party is served with a subpoena or an order issued in other litigation that  
14 would compel disclosure of any information or items designated in this action as  
15 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the  
16 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately  
17 and in no event more than three court days after receiving the subpoena or order. Such  
18 notification must include a copy of the subpoena or court order.

19 The Receiving Party also must immediately inform in writing the Party who caused the  
20 subpoena or order to issue in the other litigation that some or all the material covered by the  
21 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must  
22 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that  
23 caused the subpoena or order to issue. Further, the Receiving Party shall not produce the  
24 discovery material so requested until 14 days after giving such notice, unless required to do so by  
25 the subpoena, demand, or other legal process, in which case, the receiving party shall not produce  
26 the discovery material until within 1 day of the latest time legally permissible.

27 The purpose of imposing these duties is to alert the interested parties to the existence of  
28 this Protective Order and to afford the Designating Party in this case an opportunity to try to

1 protect its confidentiality interests in the court from which the subpoena or order issued. The  
2 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its  
3 confidential material – and nothing in these provisions should be construed as authorizing or  
4 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

5 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

6 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
7 Material to any person or in any circumstance not authorized under this Stipulated Protective  
8 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
9 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)  
10 inform the person or persons to whom unauthorized disclosures were made of all the terms of this  
11 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to  
12 Be Bound” that is attached hereto as Exhibit A.

13 10. FILING PROTECTED MATERIAL. Without written permission from the  
14 Designating Party, a Party may not file in the public record in this action any Protected Material.  
15 A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule  
16 79-5.

17 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the  
18 Producing Party, within sixty days after the final termination of this action, each Receiving Party  
19 must return all Protected Material to the Producing Party. As used in this subdivision, “all  
20 Protected Material” includes all copies, abstracts, compilations, summaries or any other form of  
21 reproducing or capturing any of the Protected Material except for material subject to the attorney  
22 client or attorney work product privileges. In the alternative, the Receiving Party may destroy  
23 some or all of the Protected Material instead of returning it. Whether the Protected Material is  
24 returned or destroyed, the Receiving Party must submit a written certification to the Producing  
25 Party (and, if not the same person or entity, to the Designating Party) by the sixty day deadline  
26 that identifies (by category, where appropriate) all the Protected Material that was returned or  
27 destroyed and that affirms that the Receiving Party has not retained any copies, abstracts,  
28 compilations, summaries or other forms of reproducing or capturing any of the Protected

1 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
2 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work  
3 product, even if such materials contain Protected Material. Any such archival copies that contain  
4 or constitute Protected Material remain subject to this Protective Order as set forth in Section 4  
5 (DURATION), above.

6 12. MISCELLANEOUS

7 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
8 person to seek its modification by the Court in the future.

9 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
10 Protective Order no Party waives any right it otherwise would have to object to disclosing or  
11 producing any information or item on any ground not addressed in this Stipulated Protective  
12 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of  
13 the material covered by this Protective Order.

14 13. NO WAIVER OF PERSONAL JURISDICTION DEFENSE

15 13.1 Party's Execution of Stipulated Protective Order. No Party shall be  
16 deemed to waive any defense to this action based upon the Court's lack of personal jurisdiction  
17 by stipulating to the entry of this Protective Order.

18 13.2 Individual's Execution of the "Acknowledgement and Agreement to be  
19 Bound." No party shall be deemed to waive any defense to this action based upon the Court's  
20 lack of personal jurisdiction by virtue of the fact that any person has executed the  
21 "Acknowledgement and Agreement to be Bound," attached hereto as Exhibit A.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.  
2

3 Dated: October 9, 2006

Peter E. Leckman

4 Joseph R. Saveri  
5 Peter E. Leckman  
6 LIEFF, CABRASER, HEIMANN &  
7 BERNSTEIN, LLP  
8 Embarcadero Center West  
9 275 Battery Street, 30th Floor  
10 San Francisco, CA 94111  
11 Phone: (415) 956-1000  
12 Fax: (415) 956-1008  
13 On behalf of PLAINTIFFS

14 Dated: October 9, 2006

Jennifer Ratner by PEL w/permission

15 Thomas Hanrahan  
16 Jennifer Ratner  
17 SIDLEY AUSTIN BROWN & WOOD  
18 555 W. 5th Street, 40th Floor  
19 Los Angeles, CA 90013  
20 Phone: (213) 896-6000  
21 Fax: (213) 896-6600  
22 Attorneys for Defendants TODA KOGYO  
23 CORPORATION and TODA AMERICA, INC.

24 Dated: October 9, 2006

William M. Goodman by PEL w/permission

25 William M. Goodman  
26 Raphael M. Goldman  
27 TOPEL & GOODMAN  
28 832 Sansome Street, 4th Floor  
San Francisco, CA 94111  
Phone: (415) 421-6140  
Fax: (415) 398-5030  
Attorneys Appearing Specially for TITAN KOGYO  
KABUSHIKI KAISHA

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2  
3 Dated: 10/11/06

4 The Hon

United



EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of *eMag Solutions LLC, et al. v. Toda Kogyo Corp., et al.*; Case No. C-02-1611 (PJH). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

[printed name]

Signature: \_\_\_\_\_

[signature]